

REMARKS

Claims 1 and 35-53 are pending in the present application. By this Amendment, previously presented claims 35-36 and 47 have been amended. Applicants respectfully request reconsideration of the present claims in view of the foregoing amendments and the following remarks.

I. Formal Matters:

Previously presented claims 1 and 35-53 were subject to the following restriction requirement and election of species requirement.

Restriction Requirement:

The April 06, 2011 Office Action proposes to separate previously presented claims 1 and 35-53 into six separate groups:

Group I, Claim 1, directed to a method of controlling microbial growth on or in engineering material with a first composition comprising fludioxonil;

Group II, Claims 35-37, directed to an antimicrobial composition comprising fludioxonil and propiconazole;

Group III, Claims 38-40 and 46-51, directed to a method of controlling microbial growth on or in industrial material with a second composition comprising fludioxonil and propiconazole (i.e., the antimicrobial composition of Group II);

Group IV, Claims 41-42 and 52-53, directed to an industrial material treated using the method of Group III, namely, with a second composition comprising fludioxonil and propiconazole (i.e., the antimicrobial composition of Group II);

Group V, Claims 43-44, directed to a method of preserving wood with a first composition comprising fludioxonil; and

Group VI, Claim 45, directed to wood treated using the method of Group V.

Applicants respectfully submit that the prior art fails to disclose, teach or suggest a method of controlling microbial growth on or in engineering material with a first composition comprising fludioxonil as recited in Applicants' independent claim 1. Applicants note that U.S. Patent No. 5,985,903 issued to Assmann et al. (hereinafter, "Assmann"), cited as alleged

“novelty-destroying” prior art in the April 06, 2011 Office Action, teaches that the disclosed benzotriazoles may be used to treat engineering materials. However, Assmann does not disclose, teach or suggest using a composition comprising fludioxonil to treat engineering materials as suggested in the April 06, 2011 Office Action. See Assmann, column 14, lines 35-38, which discloses using benzotriazoles to treat engineering materials. See also, Assmann, column 16, line 60+, which discloses using a composition comprising the disclosed benzotriazoles in combination with other known fungicides, bactericides, etc. **to treat crops**. See, in particular, column 16, lines 60-61.

However, in view of the above-described restriction requirement, Applicants respectfully submit that previously presented claims 35-42 and 46-53, namely, the combination of Groups I, II and III above, relate to a single inventive concept under PCT Rule 13.1, and should be examined as a single group of claims.

In addition, Applicants respectfully submit that the search and examination associated with the combination of Groups I, II and III is not unduly burdensome on Examiner Foley. As stated in the MPEP, §803, "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent and distinct inventions." For at least this additional reason, Applicants respectfully submit that the combination of Groups I, II and III should be examined as a single group of claims.

If Examiner Foley maintains the present restriction requirement, Applicants elect, **with traverse**, the claims of Group II, Claims 35-37, directed to an antimicrobial composition comprising fludioxonil and propiconazole.

Regarding the possible withdrawal from consideration of previously presented claims 38-42 and 46-53, Applicants note that claims 38-42 and 46-53 either (1) depend from independent claim 35, and consequently contained all of the claim features of independent claim 35 (e.g., claims 38-42), or (2) contain all of the claim features of independent claim 35 if restricted to a specifically elected species within independent claim 46 (e.g., claims 46-53) (see below).

Applicants respectfully submit that if independent claims 35 and 46 are found to be allowable, withdrawn claims 38-42 and 46-53 should be rejoined as discussed in MPEP §1893.03(d).

Effective Election of Species Requirement:

The April 06, 2011 Office Action effectively requires an election of species, requiring Applicants to limit the examined claims, for example, to those relating to an antimicrobial composition comprising fludioxonil and propiconazole (Group II above).

In order to potentially add claims 46-53 to examined claims 35-37 and possibly examined claims 38-42, Applicants are willing to elect propiconazole as component B2) recited in independent claim 46. Applicants respectfully submit that claims 35-42 and 46-53 would read on the above elected species with claims 46-53 being generic.

For at least the reasons provided above, Applicants respectfully request examination of claims 35-42 and 46-53 as a single group, and withdrawal of the restriction requirement.

II. Conclusion:

Applicants submit that claims 1 and 35-53 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Foley believe that further action is necessary to place the application in better condition for allowance, Examiner Foley is respectfully requested to contact Applicants' representative at the telephone number listed below.

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No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,
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W&K Matter No.: 10075.0069USWO
Syngenta Docket No.: 70341